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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,157	02/27/2004	Kiyoshi Sugiyama	04094/LH	8975

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EXAMINER

WILHELM, TIMOTHY

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,157

Applicant(s)

SUGIYAMA ET AL.

Examiner

Timothy D. Wilhelm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-9-2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,2,7-10,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Okuda et al (6,481,748). Okuda et al disclose a counterweight 10 for a hydraulic shovel wherein supporting column portions are vertically provided at left and right of said counterweight and opening and closing support points of outer casings 36 are provided on at least any one of said left and right supporting portions. An engine 2 is placed at a position fronting to between said left and right supporting column portions.
3. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsuka et al (US 2004/0172863). Otsuka et al disclose a counterweight 5 for a hydraulic shovel 100A wherein supporting column portions are vertically provided at left and right of said counterweight 5 and opening and closing support points 42 of outer casings 1A are provided on at least any one of said left and right supporting portions, an engine 60 is placed at a position fronting to between said left and right supporting column portions,

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and a floor frame 1A and canopy 2 are supported at said left and right supporting column portions.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al (5,671,820) in view of Cosby (3,687,484) and Okuda et al. Kobayashi et al disclose a hydraulic shovel comprising a canopy 8. Kobayashi et al disclose the present invention except for a counterweight having a left and right column support portion, supporting a canopy and a floor frame, and wherein opening and closing support points of outer casings are provided on at least any one of said left and right supporting portions. Cosby teaches a lift truck 10 comprising a counterweight 22 upon which is supported an overhead guard assembly 26 and floor frame 34 while Okuda et al disclose a counterweight 10 for a hydraulic shovel comprising a left and right column support portion wherein opening and closing support points of outer casings 36 (Fig. 5) are provided on at least any one of said left and right supporting portions. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Cosby and Okuda et al to the hydraulic shovel of Kobayashi et al

to enable access to the engine of the hydraulic shovel for maintenance without having to move the counterweight.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Takemura et al (US 2003/0226293) disclose a hydraulic shovel comprising a counterweight 57 upon which a canopy 53 and a floor frame are supported. Watanabe et al (6,922,925) also disclose a hydraulic shovel comprising a counterweight 5 upon which a canopy 23 and the floor frame 6 of the shovel are supported. Guinot (3,567,049) discloses a hydraulic shovel comprising a counterweight 4a wherein supporting column portions are vertically provided at the left and right of said counterweight 4a and upon which the canopy and floor frame of the hydraulic shovel are supported. Kamiyama (JP 2001279722) discloses a hydraulic shovel comprising a counterweight 12 with opening and closing support points for outer casings through which maintenance may be done on the engine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D. Wilhelm whose telephone number is 571-272-6980. The examiner can normally be reached on 9:00 AM to 5:30 PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TDW



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